



The Attorney General of Texas

November 25, 1980

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Affirmative Action Employer

Mr. Brent P. Burford
Assistant City Attorney
825 West Irving Boulevard
Irving, Texas 75060

Open Records Decision No. 260

Re: Whether an employee's personnel
file is open under the Open Records
Act

Dear Mr. Burford:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether certain information relating to a workers compensation claim against the city of Irving is available to the public.

With regard to that portion of the record concerning the employee's alleged injury, the potential injuries of other employees, and information relating to the possible dangers of a particular chemical used by city employees, you have determined that it should be withheld from public inspection pursuant to section 3(a)(3) of the Open Records Act. We have examined this material, and have concluded that, in light of the pending litigation, you have made a correct determination.

As to the remainder of the record, consisting of information regarding the employee's prior injuries, and the city's safety review board accident sheets and personnel status change sheets regarding other injuries, you have not made the required finding that these should be withheld pursuant to section 3(a)(3). Instead you contend that "these are medical-related records" and as such, excepted by sections 3(a)(1) and 3(a)(2) of the act. You suggest that Open Records Decision No. 237 (1980) provides a basis for this contention.

At issue in Open Records Decision No. 237 were incident reports filed by ambulance attendants of the El Paso City-County Health Unit and related to emergency medical treatment administered to persons who had given birth under the care of lay midwives. We held that such information was excepted from disclosure by either a common law or constitutional right of privacy under section 3(a)(1).

In *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W. 2d 668 (1976), the supreme court observed that, unlike the

federal Freedom of Information Act, the Texas Open Records Act contains "no... exception... for medical files, or for files 'similar' to medical or personnel files, as is found in exception 6 of the federal act." 540 S.W. 2d at 681. The court continued:

[a]bsent such a provision, we do not believe that a court is free to balance the public's interest in disclosure against the harm resulting to an individual by reason of such disclosure. This policy determination was made by the Legislature when it enacted the statute. 'All information collected, assembled, or maintained by governmental bodies' is subject to disclosure unless specifically excepted. We decline to adopt an interpretation which would allow the court in its discretion to deny disclosure even though there is no specific exception provided.

Id. at 681-82.

The court recognized two kinds of privacy which may be derived from section 3(a)(1). Constitutional privacy in information — what the court called "disclosural privacy" — exists only within one of the protected "zones of privacy" delineated by the United States Supreme Court in Roe v. Wade, 410 U.S. 113 (1973) and Paul v. Davis, 424 U.S. 693 (1976): matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. 424 U.S. at 713. On the other hand, in order that information be "deemed confidential by judicial decision," or withheld under the doctrine of "common law privacy," it must:

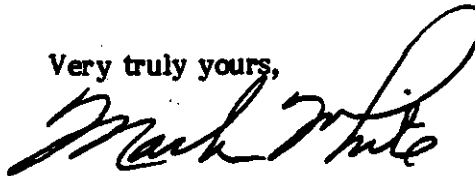
contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and... not [be] of legitimate concern to the public.

540 S.W. 2d at 685.

The other kind of privacy under the Open Records Act which is relevant to your inquiry derives from section 3(a)(2), and its availability is restricted to employees of the state or its political subdivisions. It requires a showing that disclosure of particular information would constitute "a clearly unwarranted invasion of personal privacy." In our opinion, the information you have submitted does not comport with this standard, and accordingly, is not excepted by section 3(a)(2).

We have thoroughly examined all the documents which you contend are excepted by section 3(a)(1) and 3(a)(2), and, in our opinion, none of them satisfy the requirements imposed for constitutional, common law, or employee privacy. It is therefore our decision that all information submitted which you claim to be excepted from disclosure by section 3(a)(3) is so excepted, but that the remaining material is not excepted and should be disclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written in a cursive style.

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